

FILED
MAY 03 2011
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

85962-1

2011 APR 19 11:34:24

No. 63053-9-1

COURT OF APPEALS
DIVISION I,
OF THE STATE OF WASHINGTON

JAMES GORMAN IV, as General Partner of
HOLLYWOOD VINEYARDS LIMITED
PARTNERSHIP,

Appellants,

v.

CITY OF WOODINVILLE,

Respondent.

CITY OF WOODINVILLE'S PETITION FOR REVIEW

Greg A. Rubstello, WSBA #6271
Attorneys for Respondent
OGDEN MURPHY WALLACE, P.L.L.C.
1601 Fifth Avenue, Suite 2100
Seattle, Washington 98101-1686
Tel: 206.447.7000/Fax: 206.447.0215

ORIGINAL

TABLE OF CONTENTS

	<i>Page</i>
A. IDENTITY OF PETITIONER.....	1
B. COURT OF APPEALS DECISION.....	1
C. ISSUES PRESENTED FOR REVIEW	1
D. STATEMENT OF THE CASE.....	2
1. Background/Introduction.	2
E. ARGUMENT WHY REVIEW SHOULD BE GRANTED	3
1. The Court of Appeals' Decision Involves an Issue of Substantial Public Interest.....	4
a. Whether or not the bar to a claim of right predicated upon the passage of time in RCW 4.16.160 is inapplicable if the passage of time asserted occurred prior to government ownership of the land, is an issue of first impression and of substantial public interest.....	4
b. The specific language of the statute bars a claim of right based upon the passage of time from being asserted against the government, not the assertion of a claim of adverse possession during a period of government ownership of property.....	6
c. City's interpretation of RCW 4.16.160 is consistent with traditional principles of adverse possession.....	9
d. Purposes (policies) behind the 1903 legislative enactment support the trial court's interpretation and decision.	12
2. The Court of Appeals Decision Is In Conflict With Prior Decisions Of This Court.	14
F. CONCLUSION.....	15
APPENDIX A.....	A-1
APPENDIX B.....	B-1
APPENDIX C.....	C-1

TABLE OF AUTHORITIES

	<i>Page</i>
 Cases	
<i>Bowden-Gazzam Co. v. Hogan</i> , 22 Wn.2d 27, 39, 154 P.2d 285 (1944) ...	9
<i>City of Benton City v. Adrian</i> , 50 Wn. App. 330, 336, 748 P.2d 679 (1988).....	11
<i>Commercial Waterway Dist. No. 1 of King County v. Permanente Cement Co.</i> , 61 Wn.2d 509, 512-13, 379 P.2d 178 (1963).....	4, 9
<i>Halverson v. Bellevue</i> , 41 Wn. App. 457, 460, 704 P.2d 1232 (1985).....	9
<i>Mugass v. Smith</i> , 22 Wn.2d 429, 431, 206 P.2d (1949).....	9
<i>Schall v. Williams Valley R. Co.</i> , 35 Pa. 191, 204, 11 Casey 191 (1860)...	9
<i>Simonson v. Veit</i> , 37 Wn. App. 761, 683 P.2d 611 (1984), review denied, 102 Wn.2d 1013	9
<i>State v. Campbell and Gwinn, L.L.C.</i> , 146 Wn.2d 1, __, 43 P.3d 4 (2002).....	13, 14
<i>State v. Scott</i> , 89 Wash. 63, 76, 154 P. 165 (1916).....	10
<i>Town of West Seattle v. West Seattle Land & Improvement Co.</i> , 38 Wash. 359, 363-64, 80 P. 549 (1905)	4, 9
<i>Wheeler v. Stone</i> , 1 Cush. 313, 55 Mass. 313 (1848)	9
 Statutes	
CR 12(b)(6).....	2, 3
RAP 13.4(b)(1)	3
RAP 13.4(b)(3)	3
RCW 4.16.020	1, 4, 5, 6, 14
RCW 4.16.160	1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, 14
RCW 7.28.050	5
RCW 7.28.070	5
RCW 7.28.080	5
 Other Authorities	
BLACKS LAW DICTIONARY, 6th Ed., at 248 (1990).....	5
Stoebuck, <i>The Law of Adverse Possession</i> , 35 Wash. Law Rev. 53, 54-56 (1960).....	5

A. IDENTITY OF PETITIONER

The City of Woodinville, a Washington municipal corporation (“the City”), hereby respectfully seeks review by the Supreme Court of the published Court of Appeals decision identified in Part B.

B. COURT OF APPEALS DECISION

The Court of Appeals filed its published opinion on March 21, 2011. *Gorman v. Woodinville*, ---P.3d---, 2011 W2989415, Wash.App. Div.1, March 21, 2011 (NO. 63053-9-1). The Court of Appeals’ slip opinion is in Appendix A attached to this pleading.

C. ISSUES PRESENTED FOR REVIEW

1. Does the language in RCW 4.16.160, which provides that “*no claim of right predicated upon the lapse of time shall ever be asserted against the state,*”¹ protect the state and its local governments against an asserted claim of right to land predicated upon the running of the ten-year statute of limitations in RCW 4.16.020 and adverse possession of the land, when the ten-year period of time is claimed to have run prior to dedication of the land by a private landowner to the City?

¹ (Emphasis added.)
{GAR875189.DOC;3\00046.050034\}

D. STATEMENT OF THE CASE

1. Background/Introduction.

James Gorman IV, as General Partner of Hollywood vineyards Limited Partnership (Gorman), filed his COMPLAINT TO QUIET TITLE ("the Complaint") in King County Superior Court on July 10, 2007. The only defendant named in the Complaint is the City. In his Complaint, Gorman admits the interest of the City in the subject property and asserts that *"the City may claim, pursuant to a dedication from a third party that occurred in December 2005, an interest in property adjacent to Plaintiff's Property, ... described as ... "Tract Y.""*² Gorman further asserted that he, as plaintiff, together with his tenants, employees, and customers, *"since approximately 1984, and in any event for well over ten years, have exclusively used Tract Y for vehicle parking and for purposes related thereto."*³ Gorman asked the court to quiet title to Tract Y in his favor and to extinguish any claim of title made by the City. CP 8. Gorman's Superior Court Complaint is attached as Appendix B to this pleading.

The City filed a CR 12(b)(6) motion in response to Gorman's claim. The City's motion argued that RCW 4.16.160 barred Gorman's claim based upon the specific language of RCW 4.16.160, which provides

² (Emphasis added.)

³ (Emphasis added.)

{GAR875189.DOC;3\00046.050034\ }

that “*no claim of right predicated upon the lapse of time shall ever be asserted against the state*”.⁴ CP -20-25. The CR 12(b)(6) motion was granted, dismissing the Complaint. CP 62-63. Gorman appealed to Division I. CP 111-117.

The appeals court filed its published opinion (Appendix A hereto) on March 21, 2011, reversing and remanding for determination the validity of Gorman’s claim of right to the subject land predicated on the passage of ten or more years of time and continuous adverse possession prior to the dedication of the subject land to the City.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

This Court is familiar with the criteria governing the acceptance of review of a Court of Appeals opinion. Here, the Court of Appeals decision satisfies two of these standards: RAP 13.4(b)(1) and RAP 13.4(b)(3).

⁴ (Emphasis added.)
{GAR875189.DOC;3\00046.050034\}

1. The Court of Appeals' Decision Involves an Issue of Substantial Public Interest.
 - a. Whether or not the bar to a claim of right predicated upon the passage of time in RCW 4.16.160 is inapplicable if the passage of time asserted occurred prior to government ownership of the land, is an issue of first impression and of substantial public interest.

This petition for review presents the Supreme Court with an issue of first impression concerning the specific language of a statute intended to protect the public interest and, specifically, local and state governments. The interpretation of this statute will affect both the state and local governments throughout the State of Washington, as RCW 4.16.160 applies to all local governments acting in their governmental capacity. *Commercial Waterway Dist. No. 1 of King County v. Permanente Cement Co.*, 61 Wn.2d 509, 512-13, 379 P.2d 178 (1963) (title by adverse possession cannot be acquired to property of the state or to property held by a municipality or quasi-municipality for public purposes in its governmental capacity); *Town of West Seattle v. West Seattle Land & Improvement Co.*, 38 Wash. 359, 363-64, 80 P. 549 (1905) (the general rule is that a party cannot acquire title by adverse possession to property held by a municipality in its governmental capacity for public purposes). A claimant's ability to assert title by adverse possession must arise out of

one of the applicable statutes of limitations. Here the applicable statute is RCW 4.16.020. The passage of time is a clear element of any assertion of title claiming adverse possession. The passage of time prior to City ownership is the predicate for Gorman's claim of title and should be barred by RCW 4.16.160.

This petition seeks the Supreme Court's affirmation that the language of RCW 4.16.160 bars a quiet title action being pursued against the government, when the plaintiff's claim to title⁵ is predicated on an unperfected claim of adverse possession under either the ten or seven-year statutes regardless of when the ten or seven-year passage of time asserted by the claimant occurred.⁶ No reported Washington case prior to the decision that is the subject of this petition, has addressed the issue of whether or not the plain language of RCW 4.16.160, bars a claimant from litigating and proving that their claim of title was acquired by their adverse possession of property for a ten or seven-year period of time before record title was acquired by the government.⁷

⁵ Claim of right, claim of title, and claim of ownership are synonymous terms. BLACKS LAW DICTIONARY, 6th Ed., at 248 (1990).

⁶ Stoebe, The Law of Adverse Possession, 35 Wash. Law Rev. 53, 54-56 (1960); and RCW 4.16.020; RCW 7.28.070; and RCW 7.28.050; and RCW 7.28.080.

⁷ The issue was raised by the property owner in *City of Benton City v. Adrian*, 50 Wn.2d., 39, 154 P.2d 285 (1944), but the appeals court side stepped the issue and affirmed on other grounds.

{GAR875189.DOC;3\00046.050034\}

Since RCW 4.16.160 applies to state government and to all local governments of Washington State holding title to property in their governmental capacity, the issue presented by this petition is of broad public interest. Not only is the issue of interest to the state and local governments, but also of interest to land owners that seek development permits and must dedicate property to local governments as a condition of project permit, subdivision, and binding site plan approval. If dedication of title to local governments satisfying a condition of subdivision or other development permit approval is subject to upset by claim of adverse possession months or years following project permit approvals, local government will require greater security and warranty of title form dedicators.

- b. The specific language of the statute bars a claim of right based upon the passage of time from being asserted against the government, not the assertion of a claim of adverse possession during a period of government ownership of property.

Washington's statute protecting governments from claims of ownership of government-held property from persons claiming superior title arising out of Washington's ten-year statute of limitations in RCW 4.16.020 was adopted in 1903.⁸ Thus, for many years, it has been

⁸ The 1903 legislation is included in Appendix C to this pleading.
{GAR875189.DOC;3\00046.050034\}

commonly known that claims of adverse possession of property may not be made against the State or local governments acquiring title when acting in their governmental capacity. The particular language of RCW 4.16.160 at issue is as follows:

...the limitations prescribed in this act (chapter) shall apply to actions brought in the name or for the benefit of any county or other municipality or quasi municipality of the state in the same manner as to actions brought by private parties: *Provided*, That there shall be no limitation to actions brought in the name or for the benefit of the state, and no claim of right predicated upon the lapse of time shall ever be asserted against the state:....

No doubt the 1903 amendment has discouraged the assertion of claims of right predicated upon the passage of time and adverse possession after a government has acquired title. Under the plain language of RCW 4.16.160, a claimant is barred from litigating and proving his or her claim of title was acquired by his or her adverse possession of property for a ten or seven-year period of time before record title was acquired by the government. The fact that the period of claimed adverse possession is prior to the dedication of the property to the City by the prior record property owner is irrelevant as the statutory language makes no distinction between the time before and after acquisition by the government. There is

{GAR875189.DOC;3\00046.050034\}

no exception for claims predicated on the passage of time prior to the acquisition of title by government.

Significantly, the statutory bar is not limited to a claim of adverse possession being asserted against the state, but rather the statute prohibits any claim of right predicated upon the lapse of time from being asserted against the state. Accordingly, the Court of Appeals' reasoning that the underlying claim was made against the prior owner, a private party rather than the government, does not hold water. The prior owner is not even a party to the lawsuit. Arguably, had the statute simply prohibited suits against the state based upon the adverse possession of state-held property, the Court of Appeals would have been correct in its interpretation of the statute, but the statutory prohibition is not so limited. The Washington legislature chose much broader language prohibiting, without qualification, all claims of right against the state predicated on the passage of time.

Here, the City is the only defendant. Its title to the land in question is being challenged by Gorman predicated upon the lapse of at least ten years prior to the dedication to the City, during which time Gorman claims to have adversely possessed the property. The City is placed in the very position intended by the plain language of the statute to prevent from

happening. The City must use its resources and defend against the claim of right being asserted. Arguably, had the statute simply prohibited suits against the state based upon the adverse possession of state held property, the Court of Appeals would have been correct in its interpretation of the statute, but the statutory prohibition is not so limited. The Washington legislature chose much broader language prohibiting without qualification all claims of right against the state predicated on the passage of time.

c. City's interpretation of RCW 4.16.160 is consistent with traditional principles of adverse possession.

The Court of Appeals' conclusion that the City's interpretation of RCW 4.16.160 disregards traditional principles of adverse possession⁹ is mistaken. The principles referenced by the appeals court are cited out of context. None of the cases cited by the Court of Appeals in footnotes 10 through 13 of its decision involve a claim of adverse possession against a City or other government.¹⁰ In the cases cited by the Court of Appeals in its decision, no claim of title by the passage of time and adverse possession was asserted against a government. It is also a traditional principle of adverse possession that a claim of title by adverse possession

⁹ Slip Opinion at 3-4.

¹⁰ The Appeals Court cites to *Mugass v. Smith*, 22 Wn.2d 429, 431, 206 P.2d (1949); *Schall v. Williams Valley R. Co.*, 35 Pa. 191, 204, 11 Casey 191 (1860); *Bowden-Gazzam Co. v. Hogan*, 22 Wn.2d 27, 39, 154 P.2d 285 (1944); *Wheeler v. Stone*, 1 Cush. 313, 55 Mass. 313 (1848); *Halverson v. Bellevue*, 41 Wn. App. 457, 460, 704 P.2d 1232 (1985). {GAR875189.DOC;3\00046.050034\}

cannot be asserted against a government even if the claimant claims satisfaction of the passage of time and all other elements of adverse possession. *Commercial Waterway Dist. No. 1 of King County*, 61 Wn.2d at 512-13 (title by adverse possession cannot be acquired to property of the state or to property held by a municipality or quasi-municipality for public purposes in its governmental capacity); *Town of West Seattle*, 38 Wash. at 363-64; *Simonson v. Veit*, 37 Wn. App. 761, 683 P.2d 611 (1984), *review denied*, 102 Wn.2d 1013 (where property owners were contract purchasers from state and did not receive deed for lot until entire purchase price had been paid, adjoining property owner did not satisfy ten-year period for prescriptive easement to alley on property owners' land inasmuch as title remained in state until deed was issued and adverse possession could not be asserted against state); *State v. Scott*, 89 Wash. 63, 76, 154 P. 165 (1916) (“[I]t is elementary that adverse possession cannot be made the basis of title as against a sovereign state.”).

In all of the cases cited by the Court of Appeals, all or part of the time of the claimed adverse possession was alleged to have run after title was conveyed to the government. All claims were unsuccessful. However, since in none of these cases is all of the passage of time alleged to have occurred prior to government ownership, the question as to

whether the adverse possession claim could be asserted against the government if all the claimed period of adverse possession was prior to the acquisition of title by the government has remained unaddressed by the courts. There is no reported case law in Washington on this issue despite the existence of the subject language in the statute since 1903. Thus, this is an issue of first impression for the appellate courts of Washington and a decision that should be made by the Supreme Court.

In the only reported Washington case in which a claimant asserted that because his claimed easement was acquired by prescription prior to government acquisition of the property in question he was not barred from asserting his claim, the Court of Appeals Division III did not address the issue. *City of Benton City v. Adrian*, 50 Wn. App. 330, 336, 748 P.2d 679 (1988). The case was decided on other grounds, and the court did not comment one way or the other on the issue.

The protection provided state and local governments by RCW 4.16.160, as well as the protection given public funds and the certainty of dedications and other conveyances of land given to local governments by private property owners seeking development approvals, is significant and in the public interest. How is a local government to protect itself from the claim of adverse possession being made by a third party after the fact of a

development approval requiring the dedication of land for roads and other public facilities, and thousands and even millions of dollars are already invested in the development? Local governments will have to require greater security at greater cost to the applicants for development approvals. The decision by the Court of Appeals is against the public interest and the policy behind the statute.

- d. Purposes (policies) behind the 1903 legislative enactment support the trial court's interpretation and decision.

The Court of Appeals, after discussing the judicially recognized purposes behind the statute, abruptly concluded that, "*these purposes are served only where the land is in public ownership at the time the claim arises.*"¹¹ *Slip Op.* at 5. This conclusion is reached without any discussion, rationale or analysis. The recognized purposes behind the statute cited by the Court of Appeals, all of which are supportive of the public interest in the statute, were framed by the Court of Appeals as follows:

Government immunity from statutes of limitation protects the public from suffering for the negligence of its representatives, and allows the state to allocate its resources to uses other than vigilance about inchoate

¹¹ (Emphasis added).
{GAR875189.DOC;3\00046.050034\}

claims. It also protects the public from the costs of legal fees, awards, and insurance coverage that accompany lawsuits against the government.

Gorman has asserted an inchoate claim against the City causing the City to incur the costs of litigation, defend the ten-year claim of adverse possession and potentially pay for the property through an inverse condemnation claim for damages if Gorman is successful. The City is placed in the very position intended by the plain language of the statute to prevent from happening. The City must use its resources and defend against the claim of right being asserted. As stated above, if RCW 4.16.160 does not protect governments from claims like Gorman's, governments will have to be more vigilant against such claims and will have to consider the affect on the timing and costs of development approvals where land dedications are required or permitted in lieu of the payment of development fees by developers. The conclusion made by the Court of Appeals that the purposes of the statute are only served if the land is in public ownership at the time the adverse possession claim accrues is utter nonsense. How can local governments accept property dedications when unknown claimants like Gorman, after the fact, are able to assert their claim of title by adverse possession? The public purposes behind

the statute are substantial, and the issue presented in this case is a question of substantial public interest.

2. The Court of Appeals Decision Is In Conflict With Prior Decisions Of This Court.

Although the single issue presented by this petition is an issue of first impression, the Court of Appeals' decision conflicts with the prior decisions of this court applying and defining the *plain meaning rule* in the judicial review of a statute. See *State v. Campbell and Gwinn, L.L.C.*, 146 Wn.2d 1, 9-12, 43 P.3d 4 (2002). The plain meaning of a statute, unless it ambiguous after the appropriate inquiry, is derived from all of what the legislature has said in a statute and related statutes which disclose legislative intent about the provision in question. Here, RCW 4.16.160 in its express language makes no distinction between claims of title/right predicated on the passage of time occurring before or after government acquires title, and nothing in the statute indicates such a distinction was intended. RCW 4.16.160 is part of a complete chapter that includes statutes of limitation, including RCW 4.16.020, the ten-year statute of limitation on which Gorman's claim is predicated. It is clear that RCW 4.16.160 was intended to prohibit a claim of title predicated on RCW 4.16.020 or any of the other statutes of limitation in the chapter.

The Court of Appeals did not attempt to derive the plain meaning of RCW 4.16.160 from the language of the statute or from what the legislature has said in the other statutes of the chapter. The decision is in conflict with *State v. Campbell and Gwinn, L.L.C., supra*, and its progeny on the application of the plain meaning doctrine.

F. CONCLUSION

The application of RCW 4.16.160 to the facts of this case raises an issue of first impression. The issue is of significant public interest, and the interpretation of the statute is in conflict with a prior decision of this court. The decision of the Court of Appeals should be reversed and the decision of the Superior Court reinstated.

RESPECTFULLY SUBMITTED this 19th day of April, 2011.

Respectfully submitted,

OGDEN MURPHY WALLACE, P.L.L.C.

By



Greg A. Rubstello, WSBA #6271
Attorneys for Respondent

APPENDIX A

Court of Appeals Slip Opinion

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

JAMES GORMAN IV, as General Partner of
HOLLYWOOD VINEYARDS LIMITED
PARTNERSHIP,

Appellant,

v.

CITY OF WOODINVILLE,

Respondent.

No. 63053-9-I

PUBLISHED OPINION

FILED: March 21, 2011

ELLINGTON, J. — The government is protected by statute against claims of adverse possession. The statute does not protect private landowners, even if they later sell to the government. Here, James Gorman claims he acquired ownership by adverse possession before the government purchased the land. If so, his claim is not barred. We reverse and remand for determination of the validity of his claim of title by adverse possession to property recently acquired by the City of Woodinville.

BACKGROUND

The City of Woodinville (City) acquired record title to Tract Y for a road improvement project. James Gorman IV, as General Partner of Hollywood Vineyards Limited Partnership (Gorman), filed an action to quiet title to Tract Y, alleging he had acquired vested title by adverse possession before the land was conveyed to the City.

The City moved to dismiss under CR 12(b)(6), arguing Gorman's claim was barred by RCW 4.16.160, which provides that "no claim of right *predicated upon the lapse of time* shall ever be asserted against the state."¹ The City asserted Gorman's claim was predicated upon a lapse of time and therefore barred. The trial court agreed and dismissed.

Gorman contends the 10-year statute of limitations ran while the property was in private hands and his quiet title action is not barred by RCW 4.16.160. We agree and reverse.

DISCUSSION

Dismissal under CR 12(b)(6) is appropriate only if the complaint alleges no facts that would justify recovery.² The plaintiff's allegations and any reasonable inferences are accepted as true.³ Our review is de novo.⁴

The doctrine of adverse possession permits acquisition of legal title to private land without the owner's consent where the claimant possesses the property for at least 10 consecutive years and can prove the other requirements of the doctrine.⁵ Adverse possession is thus partly dependent upon the passage of a statute of limitations. Under

¹ (Emphasis added.)

² Reid v. Pierce Cnty., 136 Wn.2d 195, 200-01, 961 P.2d 333 (1998); Orwick v. City of Seattle, 103 Wn.2d 249, 254, 692 P.2d 793 (1984).

³ Reid, 136 Wn.2d at 201.

⁴ Id.

⁵ RCW 4.16.020. Successful adverse possession in Washington requires 10 years of possession that is (1) actual; (2) open and notorious; (3) hostile; (4) continuous; and (5) exclusive. ITT Rayonier, Inc. v. Bell, 112 Wn.2d 754, 757, 774 P.2d 6 (1989).

RCW 4.16.160, claims predicated upon lapse of time may not be asserted against the government, so adverse possession does not run against the government.⁶

The question here is whether vested title acquired by adverse possession against a *private* owner can be asserted after the record owner attempts to convey the property to the government.

The City asserts such claims are unambiguously prohibited by the statute because they are predicated upon lapse of time.⁷ The City points to Commercial Waterway District No. 1 v. Permanente Cement Company,⁸ where the plaintiff claimed to have adversely possessed property while the water district owned it. Not surprisingly, the court rejected the claim, holding that cities, acting in a governmental capacity, are exempt from the 10-year statute of limitations for adverse possession.⁹ But this holding is not germane to the question here because unlike the waterway district, the City did not own the property when Gorman's title allegedly vested.

The City's interpretation of the statute disregards traditional principles of adverse possession. Title acquired by an adverse possessor, although not recorded, is valid

⁶ Edmonds v. Williams, 54 Wn. App. 632, 634, 774 P.2d 1241 (1989) (citing Commercial Waterway Dist. No. 1 of King Cnty. v. Permanente Cement Co., 61 Wn.2d 509, 512, 379 P.2d 178 (1963)).

⁷ Municipalities acting in a governmental capacity constitute "the state" under RCW 4.16.160. Commercial Waterway, 61 Wn.2d at 512. The City is a Washington municipal corporation.

⁸ 61 Wn.2d 509, 510–11, 379 P.2d 178 (1963).

⁹ Id. at 512–13; see also Town of West Seattle v. West Seattle Land & Improvement Co., 38 Wash. 359, 363–64, 80 P. 549 (1905) (party could not adversely possess public roadway).

and enforceable.¹⁰ Once an adverse possessor has fulfilled the conditions of the doctrine, title to the property vests in his favor.¹¹ The adverse possessor need not record or sue to preserve his rights in the land.¹² Rather, the law is clear that title is acquired upon passage of the 10-year period.¹³

The City contends these rules apply only to private parties. But the underlying claim here involved only private parties.

The City also points out that no case has addressed precisely these facts. But no case has abandoned settled analysis in similar circumstances. For example, City of Benton City v. Adrian involved a claim of a prescriptive easement for drainage onto city property, an easement that cannot be acquired if the property is held by a municipal corporation in its governmental capacity.¹⁴ Adrian contended, however, that the claimed easement was perfected before the city acquired the property. The court held Adrian had failed to prove the elements of adverse possession against the previous owner.¹⁵ The court gave no indication that, if established by the evidence, such a claim might be

¹⁰ Mugaas v. Smith, 33 Wn.2d 429, 431, 206 P.2d 332 (1949). To rule otherwise, the court said, would be to require an adverse possessor to "keep his flag flying for ever [sic], and the statute [would] cease[] to be a statute of *limitations*." Id. at 433 (quoting Schall v. Williams Valley R. Co., 35 Pa. 191, 204, 11 Casey 191 (1860)).

¹¹ Bowden-Gazzam Co. v. Hogan, 22 Wn.2d 27, 39, 154 P.2d 285 (1944) (quoting Wheeler v. Stone, 1 Cush. 313, 55 Mass. 313 (1848)).

¹² Halverson v. City of Bellevue, 41 Wn. App. 457, 460, 704 P.2d 1232 (1985).

¹³ Id. ("The law is clear that title is acquired by adverse possession upon passage of the 10-year period. The quiet title action merely confirmed that title to the land had passed to Halverson by 1974." (citations omitted)).

¹⁴ 50 Wn. App. 330, 336, 748 P.2d 679 (1988) (citing Commercial Waterway, 61 Wn.2d at 512).

¹⁵ Id. at 337.

barred.

In short, Washington cases support Gorman's claim, and the City offers no persuasive reason their principles should not apply.

The City also contends that the policy behind RCW 4.16.160 supports a bar against claims like Gorman's. We disagree.

Government immunity from statutes of limitation protects the public from suffering for the negligence of its representatives, and allows the state to allocate its resources to uses other than vigilance about inchoate claims.¹⁶ It also protects the public from the costs of legal fees, awards, and insurance coverage that accompany lawsuits against the government.¹⁷ These purposes are served only where the land is in public ownership at the time the claim arises. Permitting Gorman's claim implicates none of the policies underlying the statute.

Further, Gorman's quiet title action is predicated not upon a lapse of time but upon proof of vested title. The fact that, at trial, he would need to prove the elements of adverse possession, including passage of the statute of limitations against the former owner, does not mean his quiet title action is predicated upon the lapse of time as to the City.

¹⁶ Bellevue Sch. Dist. v. Brazier Constr. Co., 103 Wn.2d 111, 114, 691 P.2d 178 (1984) (quoting United States v. Thompson, 98 U.S. 486, 489-90, 8 Otto 486, 25 L. Ed. 194 (1878)); see also Guaranty Trust Co. of New York v. United States, 304 U.S. 126, 141, 58 S. Ct. 785, 82 L. Ed. 1224 (1938); 17 WILLIAM B. STOEBUCK, JOHN W. WEAVER, WASHINGTON PRACTICE: REAL ESTATE: PROPERTY LAW § 8.1, at 515 (2d ed. 2004 & Supp. 2010).

¹⁷ See LAWS OF 1986, ch. 305, § 100 (preamble); Bellevue Sch. Dist. v. Brazier Constr. Co., 100 Wn.2d 776, 783, 691 P.2d 178 (1984).

If Gorman had valid title before the City purchased the property, we think he has it still. We reverse and remand for trial.¹⁸

WE CONCUR:

Appelwick, J.

Emery, J.

Cox, J.

¹⁸ Given our disposition, we need not reach the arguments concerning fees and costs except to point out that deposition costs are awardable only insofar as the depositions are used at trial. Kiewitt-Grice v. State, 77 Wn. App. 867, 874, 895 P.2d 6 (1995) (fees for deposition transcripts not used at trial not awardable under RCW 4.84.010); Platts v. Arney, 46 Wn.2d 122, 128-29, 278 P.2d 657 (1955) (fees for depositions taken for discovery but not used at trial not awardable under RCW 4.48.090). The City's argument that Kiewitt-Grice does not apply here because the City's cost award did not include transcription fees is unpersuasive.

APPENDIX B

Complaint

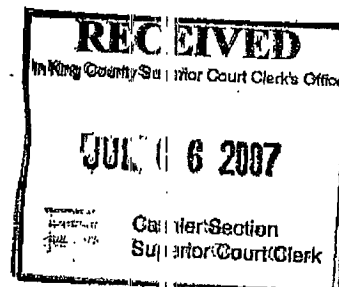
{GAR875189.DOC;3\00046.050034\}

MICHAEL C. HAYDEN

RECEIVED

JUL 10 2007

City of Woodinville

James H. Huan, City Clerk

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

JAMES GORMAN IV, as General Partner of
HOLLYWOOD VINEYARDS LIMITED
PARTNERSHIP

Plaintiff,

v.

CITY OF WOODINVILLE,

Defendant.

07-2-22368-1 SEA

COMPLAINT to QUIET TITLE
(Adverse Possession)

1. IDENTIFICATION OF PARTIES/JURISDICTION.

1.1 The plaintiff claims an interest in the real property located in King County which is the subject of this action. The plaintiff has paid all fees and costs due and owing the State of Washington.

1.2 The defendant City of Woodinville (the "City") is a subdivision of the State of Washington. The City may claim an interest in the parcel in King County, WA, that is the subject of this action.

2. PROPERTY

2.1 The plaintiff is the owner of the commercial property in King County, WA, legally described on Ex. No. 1 (the "Plaintiff's Property"). The Plaintiff's Property has been improved, since approximately 1984, with a retail building occupied by a number of tenants.

2.2 The City may claim, pursuant to a dedication from a third party that occurred in

COMPLAINT TO QUIET TITLE
AND EJECTMENT - Page 1
Daryl/Hollywood/p-Complaint.dad

COPY

RODGERS DEUTSCH & TURNER, P.L.L.C.
ATTORNEYS AT LAW
THREE LAKE BELLEVUE DRIVE
SUITE 100
BELLEVUE, WASHINGTON 98005-2440
(425) 415-1110
Fax: (425) 455-1626

December 2005, an interest in the property adjacent to Plaintiff's Property, and legally described as follows:

Tract Y of Woodinville Village Binding Site Plan recorded under Recording No. 20051222002236.

Hereafter "Tract Y".

3. ADVERSE POSSESSION

3.1 The plaintiff, and plaintiff's tenants, employees, customers and invitees, since approximately 1984, and in any event for well over ten years, have exclusively used Tract Y for vehicle parking and for purposes related thereto.

3.2 Plaintiff, based upon the facts set forth in Section 3.1 above, has adversely possessed Tract Y.

WHEREFORE, the plaintiff requests the following relief:

1. That title to Tract Y be quieted in favor of plaintiff, and that all claims of the defendants, and any person or party claiming by or through them, be forever extinguished.
2. For such other and further relief as this court deems just and equitable.

DATED this ____ day of _____, 2007.

RODGERS DEUTSCH & TURNER, PLLC

Daryl A. Deutsch, WSBA #11003
Attorney for Plaintiff

EXHIBIT NO. 1**Property Owned by Hollywood Vineyards Limited Partnership**

That portion of Tract 37 of Hollywood Acres, as per plat recorded in Volume 29 of plats, page 23, records of King County, described as follows:

Beginning at the most Northerly corner of said tract;

Thence South 01°25'07" West, along the West line thereof, 490.00 feet;

Thence South 88°34'53" East, 175.00 feet;

Thence North 01°25'07" East, parallel with the West line of said tract, to intersect the Northeasterly line of said tract;

Thence Northwesterly, along said Northeasterly line to the point of beginning;

Situate in the City of Woodinville, County of King, State of Washington.

APPENDIX C
1903 Legislation

{GAR875189.DOC;3\00046.050034\}

CHAPTER 24. ✓

[S. B. No. 56.]

740.102² RELATING TO DEFENCE OF STATUTE OF LIMITATIONS.

AN ACT relating to the defence of the statute of limitations in actions brought by or for the benefit of the State or any of its municipalities, amending section 35 of the Code of Civil Procedure of Washington, of 1881, the same being section 4807 of Ballinger's Annotated Codes and Statutes of Washington, and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 4708 Ballinger's Code.

Limitation.

SECTION 1. Section 35 of the code of civil procedure of Washington, 1881, the same being section 4807 of Ballinger's Annotated Codes and Statutes of Washington, shall be amended to read as follows: Section 35 (section 4807). The limitations prescribed in this act (chapter) shall apply to actions brought in the name or for the benefit of any county or other municipality or *quasi* municipality of the state, in the same manner as to actions brought by private parties: *Provided*, That there shall be no limitation to actions brought in the name or for the benefit of the state, and no claim of right predicated upon the lapse of time shall ever be asserted against the state: *And further provided*, That no previously existing statute of limitation shall be interposed as a defense to any action brought in the name of or for the benefit of the state, although such statute may have run and become fully operative as a defense prior to the adoption of this act, nor shall any cause of action against the state be predicated upon such a statute. An action shall be deemed commenced when the complaint is filed.

Emergency.

SEC. 2. An emergency exists and this act shall take effect immediately.

Passed the Senate January 29, 1903.

Passed the House February 18, 1903.

Approved by the Governor February 27, 1903.

AN AC

Jeff

dec

Be it

SEC

State

four

of Jo

owne

ing I

and

St

be a

full

lars

Jan

at t

S

be a

the

tho

as

an

W

for

ra

ce

et